

REMARKS

Examiner Interview Summary

On June 25, 2003 a telephonic interview was conducted to discuss the pending issues in this case with Primary Examiner Ardin H. Marschel. Representing the Applicants were the undersigned, William Leschensky and Rena Kaminsky. The particular issues discussed related to the definition and definiteness of the term "free standing" and the definition of the term "functionalized" relative to the Lee prior art patent. Examiner Marschel agreed to the use of the term "freestanding" if Applicant would affirm the definition provided for freestanding at page 14, lines 29-31 of the Specification. No agreement was reached as to whether the functionalized limitation found in claim 18 was taught in the Lee reference. Applicants would like to thank the Examiner for the courtesy of participating in this interview.

Informalities

The Examiner has indicated that Claim 37 should be renumbered as Claim 87. This renumbering is reflected in the current amendment. The Examiner has also indicated that claims withdrawn from consideration due to the restriction requirement should be cancelled. The cancellation of withdrawn claims 37-86 is also reflected in the amendment. Claims 11-14 and 18-36 are also cancelled in this amendment.

Claim Objections

Independent claims 1, 15, 16 and 18, as amended herein, all include the phrase "freestanding particle". In the Office Action dated July 24, 2002, the use of the phrase "freestanding" was rejected under Section 112, second paragraph. In the AMENDMENT AND REMARKS document filed January 24, 2003, the use of the term "free standing" was replaced with the phrase "template-separated".

As discussed above, in the telephonic interview of June 25, 2003, an agreement was reached that the Section 112, second paragraph rejection would be withdrawn if the phrase "freestanding" was reintroduced into the independent claims. Further, Applicant specifically affirms the definition found in the Specification for freestanding found on

*Int. Sum. OK
for Int. of 6/25/03
AM, 7-18-03*

page 14: "By 'freestanding' it is meant that nanobar codes that are produced by some form of deposition or growth within a template have been released from the template."

Claim 1 has been further amended by including all of the limitations found in Claim 13. Claims 15 and 16 have been amended to be independent claims, including all of the limitations found in the previously pending Claim 1. In the Office Action of May 23, 2003, Claims 13, 15 and 16 were determined to be free of the prior art. Applicant believes that amended Claims 1-5, 7-10 and 15-18 are allowable, as per agreement with Examiner Marschel during the telephonic interview of June 25, 2003.

Claims 18, including the limitation that in the subject particle "a least one of said segments is functionalized" and dependent claims 19-36 are hereby cancelled in light of the lack of an agreement with Examiner Marschel. Applicants reserve the right to pursue claims directed to the subject matter of these claims in a related application.

The Examiner has maintained the provisional rejection of Claims 1-5 and 7-36 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of copending application Ser. No. 09/677,198. The Examiner indicates that the claims of the copending application are withdrawn, but not cancelled, and that the rejection is proper. Attached hereto is a copy of a supplemental amendment submitted in application Ser. No. 09/677,198 cancelling claims 1-36. Given the cancellation of these claims, Applicant believes the rejection is no longer proper. Reconsideration is respectfully requested.

Closing Remarks

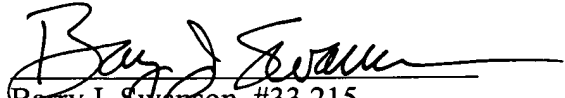
The Examiner is encouraged to contact the undersigned if any additional matters can be addressed that will lead to the prompt allowance of this application.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to Deposit Account No. 19-5117 if not otherwise specifically requested. In addition, the undersigned authorizes the charge of any fees associated with

the filing of this document, and its attachments, to Deposit Account No. 19-5117.

Respectfully submitted,

Date: July 2, 2003


Barry J. Swanson, #33,215
Swanson & Bratschun, L.L.C.
1745 Shea Center Drive, Suite 330
Highlands Ranch, Colorado 80129
Telephone: (303) 268-0066
Facsimile: (303) 268-0065

S:\CLIENT FOLDERS\NANOPLEX\2182\A\PSU-00-2182A AMDMT2.DOC